

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY KEITH DAILEY,

Plaintiff,

v.

Civil Action No. 2:07cv94

**ST. MARY'S CORRECTIONAL FACILITY,
WILLIAM M. FOX, TONY LeMASTERS,
DAN KIMBLE and SMCC RESIDENTIAL
SUBSTANCE ABUSE AND THERAPEUTIC
BEHAVIOR THERAPY PROGRAM,**

Defendants.

ORDER

It will be recalled that on June 16, 2008, Magistrate Judge Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his objections on June 27, 2008.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, filed pursuant to 42 U.S.C. §1983, wherein Plaintiff alleges that Defendants improperly removed him from substance abuse treatment, wrote a false incident report, and opened and copied his personal mail, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation, as were the Defendants' Motions for Summary Judgment and to Dismiss. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that were not already throughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation

accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Defendant's Motion for Summary Judgment (Docket #34), and the Defendant's Motion to Dismiss Plaintiff's Amended Complaint (Docket #47) shall be, and the same hereby are, **GRANTED**. It is further

ORDERED that the Plaintiff civil rights complaint be, and the same hereby is, **DISMISSED** without prejudice and that this civil action be **STRICKEN** from the docket of the Court. It is further

ORDERED that the Clerk shall enter judgment for the Defendants. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

ENTER: July 25, 2008

/s/ Robert E. Maxwell
United States District Judge